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Review of Diane Fromage, *Les Parlements dans L'Union Européenne après le Traité de Lisbonne* (L' Harmattan, 2015) by Katarzyna Granat (Durham Law School)

The role of national parliaments (NPs) after the Lisbon Treaty is a topic of major political significance these days. During the recent renegotiation of Britain's future in the EU, Prime Minister David Cameron proposed that NPs should be granted a possibility to stop EU legislative proposals, often referred to as a red-card ('A New Settlement for the United Kingdom in a Reformed European Union', 10 Nov 2015). Around the same time, in May 2016, the Early Warning System (EWS), the major new tool for NP influence in the Lisbon Treaty, was triggered for the third time with a yellow card in the revision of the Posted Workers Directive. These developments underline the salience of studying the application of the EWS and discussing its enhancement and make the monograph of Diane Fromage a topical and valuable contribution to legal scholarship and the wider debate on the EWS. The book studies the role and the functioning of NPs in the years before and since the introduction of the Lisbon Treaty, how NPs have made use of the control tools at their disposal and whether ultimately the position of legislatures in the EU has changed for the better.

The monograph sets to explore the role of NPs from both the national and European perspectives. It adopts a symmetric structure organizing the material along two dimensions. Along the first dimension, Part I of the book studies whether NPs, which had a rather limited role in the earlier EU integration process, became more involved in EU affairs with the Lisbon Treaty. Along the second dimension (Part II of the book), Fromage inquires whether NPs engage with EU institutions in a direct and effective way through the EWS. To tackle both dimensions, the book provides a comparative study of national parliaments (and where applicable regional parliaments, too) in Germany, Spain, Italy, the UK and France (p. 37ff). The first selection criterion behind this group of countries is their representation of different forms of territorial organisation. The second one is that they span the traditional classification of parliaments with regard to strength in the oversight of the national executive in EU affairs between weaker (Spain, Italy and France) and stronger (the UK and Germany).

Part I of the book deals with the functioning of NPs in the EU before (Chapter 1) and after the Lisbon Treaty (Chapter 2). Chapter 1 studies whether the NPs had any real capacity to impact the EU decision making process. The chapter takes a chronological approach highlighting the major turning points that influenced the design of national procedures, coming both from the EU (e.g. the Single European Act or the Maastricht Treaty) and the national level (e.g. Legge Buttiglione of 2005 in Italy). The chapter studies constitutional as well as infra-constitutional changes (such as legislation or rules of procedure) and compares the institutional adaptation of chambers (e.g. the establishment of European affairs committees - EACs) as well as the specific rights of the chambers vis-à-vis the government. Fromage shows that the rules of procedure of the chambers did not always correspond with the reforms of national constitutions or laws (p. 139). One of the main problems identified was the insufficient or delayed provision of information on legislative proposals to NPs (ibid). Other aspects highlighted concern the limited use of explanatory memoranda beyond the UK (opinion of the government on EU documents) and the adoption of institutional structures such as EACs, often with significant differences between the chambers within a NP

(p. 140). Fromage concludes that NPs were in general not appropriately structured and equipped to be involved in EU affairs before the Lisbon Treaty (*ibid*).

Chapter 2 then enquires into the impact of the Lisbon Treaty (Section 1) and especially into the possibility to control the position taken by national government in the Council and the European Council (Section 2). One consequence of the Lisbon Treaty were reforms at the national level. The UK, Germany and Italy strengthened the role of NPs in ways that go well beyond simply repeating the guarantees enumerated in the Lisbon Treaty. In contrast, France and Spain offered only basic guarantees for NPs. These differences are shown to correlate well with the division into stronger and weaker parliaments (p. 246ff). As for the relationship between the NPs and their governments, Fromage shows that there has been a definite improvement with regard to the quality of information received by the legislatures (p. 245). In all the studied jurisdictions except for its limited version in Italy and lack in Spain the main problem remains the overriding of the scrutiny reserve by the government (p. 246).

Part II of the book is devoted to the EWS. Chapter 1 examines the participation of NPs and regional parliaments in the subsidiarity scrutiny (including the yellow cards) and the ‘political dialogue’ with the Commission. Fromage again demonstrates a connection between activity levels and classification as stronger and weaker scrutinizers: for the British or German systems, subsidiarity review is simply a part of the ordinary scrutiny of EU documents, while in France, Italy and Spain specific procedures were created or major reforms were introduced for the purpose of the EWS (p. 299ff). At the same time the EWS strengthened the relationship of parliaments with national governments which offer NPs their assessment of EU draft acts, including on subsidiarity (p. 300). The author concludes that the EWS encouraged NPs to get involved in EU affairs, especially in countries where such an involvement was not much present earlier (*ibid*).

Fromage also assesses the procedures adopted in regional parliaments for the EWS. In the author’s view those parliaments have a rather weak position, since in none of the cases studied did they receive any formal guarantee that their views are taken into account (p. 340). The monograph urges reforms that would grant a stronger voice to regional parliaments, especially in areas where EU policy affects the exclusive competences of the regions, as well as the development of an exchange of information in form of horizontal cooperation at the national level (*ibid*). In addition, at the EU level, the author suggests strengthening the existing EU-level Conference of European Regional Legislative Assemblies (CALRE) with its working group on subsidiarity and the RegPEX platform provided by the Council of Regions (p. 341). Moreover, regional parliaments could increase their impact on EU affairs by participating in public consultations organised by the Commission (*ibid*). Another option for the regional parliaments is to invest in the relationship with their executives to gain technical expertise (*ibid*).

Chapter 2 of Part II provides a critique of the EWS based on experience to date. First, noting the ambiguity of the subsidiarity principle and the scope of its application, the author supports a wide interpretation of the principle allowing NPs to assess the justification of legislation, the competence for and the degree of EU action (p. 351). Second, concerning the

timing of national scrutiny, Fromage underlines that NPs cannot assess modified legislative proposals, unless they are re-introduced, significantly limiting NPs' prerogatives (p. 353). Third, discussing the effects of reasoned opinions, the book highlights the lack of guarantees that they will actually be taken into account by the Commission: even if the required threshold of votes is met, the Treaty leaves the Commission significant freedom to decide on the consequences of a yellow or orange card for legislation (p. 354). Although the political dialogue is helpful where thresholds are not reached, the Commission should be more open to withdrawing its proposals to enhance its legitimacy and improve the dialogue with the legislatures (p. 355). Moreover, other difficulties including the tight eight week deadline for NP submissions under the EWS could be remedied, e.g. through the study of Commission Work Programme or an interinstitutional agreement which could formally prolong scrutiny time to 12 weeks (p. 356 & 396). Fromage, rightly in my view, prefers strong scrutiny of national governments and enhanced cooperation with MEPs over lowering the thresholds which could lead to blocking of the legislative procedure or unrepresentative outcomes (p. 357). Some of the weak points of the EWS discussed in the chapter are then reflected in the detailed study of the two yellow cards which follows (p. 359ff). Finally, Fromage establishes that the deficiencies of the EWS cannot be easily remedied by the reactions of the EU institutions: the Commission, the EU Legislator and the Court, among which only the EP seems to be willing to cooperate with the NPs, although this relationship also needs to be reinforced (p. 395).

In addition, this chapter looks at the deficiencies of the EWS from the perspective of national procedures, specifically the relationship between parliament and government and the national and regional parliaments. As underlined by Fromage, the timely submission of government opinions on a Commission proposal is crucial for the early detection of subsidiarity breaches (p. 398ff). Within the design of scrutiny, Fromage supports involvement of both EACs and specialised committees, as well as omitting plenary debates (p. 400). For the regional parliaments, the main issue is the limited time reserved for the scrutiny of EU drafts to be remedied by better cooperation with their national assemblies (p. 403). The two last elements taken into account by Fromage in the assessment of national level procedures for the EWS is the interest of parliaments in EU affairs and interparliamentary cooperation, especially the stronger contribution of COSAC (p. 406ff). In conclusion, both the adaptations undertaken by the Member States as well as the characteristics of the system including the underlined flaws are crucial for the future of the EWS.

Offering an outlook, Fromage foresees that the participation in the EWS will be more durable in the parliaments such as the UK or Germany which already have a tradition of participation in EU affairs rather than where it is emerging only now, as Spain or France, while in Italy despite the introduction of a new law the position of the parliament remains substantially unchanged (p. 413). Fromage emphatically rejects the notion that the EWS has been useless, partially because it co-exists with the political dialogue with the Commission (*ibid*). The 'yellow cards' to date were triggered in specific circumstances due to their legal basis and hence perhaps the EWS will in future be used in similar cases as opposed to instance where the ordinary legislative procedure is applicable (*ibid*). Having said that, the recent third

yellow card concerns a proposal to be adopted under the ordinary legislative procedure, putting a spotlight that there are likely other triggers for the yellow card which could be discussed.

The conclusion of the book presents an optimistic assessment of the involvement of national parliaments in EU affairs: parliaments are better informed and governments are better controlled, which contributes to reducing the democratic deficit of the EU (p. 415). The EWS and the 'political dialogue' have mobilised parliaments and in this sense they also contribute to the democratic credentials of the EU, yet some reforms for a more effective EWS are necessary.

The most significant contribution of the book is the critical assessment of the EWS in Part II. The reforms that the book proposes benefit from a high degree of feasibility, not requiring a change to the Treaties. Moreover, the first topic of the book, the importance of sufficient scrutiny powers of national governments, appears destined to play a crucial role in the future reforms of the position of NPs, since the so-called 'Tusk letter' of 2 Feb 2016 – the EU's answer to Cameron's demands – does not grant a veto to NPs over EU proposals, but rather leaves to the Council the accommodation of concerns expressed by NPs. Hence the degree of influence of NPs on their government is likely to become even more vital in the future. In this context, the book could have also covered some examples of unicameral NPs or NPs of the 'new' Member States. The book also adds value by considering the regional parliaments that are generally less explored in the literature and offering novel ideas for strengthening their role in the EU. The monograph, in sum, presents an in-depth study of the participation of the selected NPs in the EWS for those especially interested in this mechanism, and also offers an overview of the changing role of NPs in the EU that will be of interest to legal and political science scholars alike.